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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,894	09/23/2003	Frank G. McArthur	NAIR-001	8640
21884	7590	11/02/2006	EXAMINER	
WELSH & FLAXMAN LLC 2000 DUKE STREET, SUITE 100 ALEXANDRIA, VA 22314			FARAH, AHMED M	
			ART UNIT	PAPER NUMBER

3735

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/667,894	Applicant(s) MCARTHUR ET AL.	
	Examiner Ahmed M. Farah	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 5, 9 and 14 is withdrawn in view of the newly discovered reference(s) to Weckwerth et al. (US Pat. No. 7,118,563), Balle-Petersen et al. (US Pat. No. 6,676,654), Salansky et al. (US Pat. No. 6,063,108), and Groove et al. (US Pat. No. 5,527,350). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 6, 7, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Grove et al. US Patent No. 5,527,350.

Grove et al. disclose a method for treating psoriasis through the use of pulsed infrared laser radiation having a wavelength of between 700 to 1100 nm, and fluence of 5 to 50 J/cm² (see the abstract; col. 2, lines 42-51; and claim 1).

As to claims 6 and 10, the treatment radiation impinges upon area of between 0.1 to 10 c m² (see claim 3).

3. Claims 1, 2, 4, 5 and 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Salansky et al. US Patent No. 6,063,108.

Salansky et al. disclose apparatus and method for stimulating healing of disorders of biological tissue of a patient, the method comprising the steps of:

diagnosing the nature of the disorder and establishing the location of at least one treatment area (note: this step is inherently disclosed); and

exposing the treatment area to a laser light having a wavelength in the near IR of the EM spectrum (see the abstract; col. 3, lines 43-51), and an energy density of between 25-100 J/c m² to produce clinically beneficial treatment effects (see Table 5, protocol #s 15 and 23; and Table 7).

As to claims 4 and 5, Salansky et al. teach a method of treating chronic inflammation of soft tissue with laser beam having a wavelength of between 800-1100 nm, for exposure time of 90-120 seconds (see Table 8, protocol # 10). As to claim 10 and 11, refer to Table 9.

As to claims 12 and 13, they teach the use of both cw and pulsed lasers (see col. 18, lines 14-17).

As to claims 14 and 15, they teach methods for treating various tissue conditions such as chronic leg ulcers, carpal tunnel syndrome, acute whiplash injury, acute and

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chronic musculoskeletal conditions, post surgical complications, acute trauma and chronic post-trauma conditions in soft tissues and bones, etc. (see Examples 1-9).

4. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Weckwerth et al. US Patent No. 7,118,563.

Weckwerth et al. disclose apparatus and method of use for treating skin conditions, the apparatus comprising a pulsed laser source for providing treatment energy having a wavelength of between 700 to 1100 nm, and output fluence of between 4 to 100 J/cm² (see col. 6, lines 19+; and claims 5 and 7).

As to claim 3, Weckwerth et al. teach that the laser source is selected from the group consisting of commercially available diode lasers and YAG lasers (see col. 4, lines 1-11).

4. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Balle-Petersen et al. US Patent No. 6,676,654.

Balle-Petersen et al. disclose a method and apparatus for tissue treatment by exposing to the tissue a pulsed laser light having a wavelength of approximately 810 nm, and a fluence of approximately 100 J/cm² (see col. 4, lines 46-51).

As to claim 3, they teach the source of the treatment light is selected from the group consisting of CO₂ laser and YAG lasers such Nd:YAG (see col. 3, lines 50-55).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached at the Office on Monday, Tuesday, Thursday and Friday between 9:30 AM 7:30 PM. On Wednesday, the Examiner works from an alternative location and can be reached at (571) 344-2999 or (703) 579-5119 between 9:30 AM - 8:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marmor II Charles can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 28, 2006.

Ahmed M Farah
Primary Examiner
Art Unit 3735

